

Arizona
DIVORCE
Guide



As you research information about divorce and child custody issues, it's crucial to be able to separate fact from fiction. The more informed you are, the better about matters such as:

- what type of divorce is right for you;
- what may happen to your children;
- what may happen to your assets; and
- the different stages of divorce proceedings.

This guide was written to help you and others like you navigate this difficult and unfamiliar process as easily as possible.

Please note, however, that nothing in this guide constitutes legal advice nor establishes an attorney-client relationship. It is intended for general informational purposes only. Its primary purpose is to help you understand that if you are considering getting divorced, **you should retain the services of an experienced divorce attorney as soon as you can.**



Table of Contents

Preparation for Your Divorce

Understanding the Different Types of Divorces	4
When and Where to File for Divorce	5
Choosing the Right Divorce Attorney for You	6

The Nuts and Bolts of the Divorce Process

Filing Your Petition for Divorce	7
Preliminary Injunctions & Temporary Orders	8
Discovery & Disclosure	9
Mediation and Alternative Dispute Resolution	11
Settlement or Trial?	12

What if Children are Involved?

Parent Education Classes	13
Custodial Issues	14
Relocation Disputes	15

What Happens to My Finances?

Division of Assets	16
Child Support	17
Spousal Support	18



Preparation

Different Types of Divorces

Uncontested Divorces

An uncontested divorce is when both spouses are able to work together to get on the same page. Perhaps they don't agree about everything at first, but through consultations with their respective attorneys, they're able to smooth out their disagreements.

Consulting with an experienced advocate will give you the tools you need to peacefully negotiate your differences with your spouse. If you can successfully do so, you may be able to complete the entire divorce process without having to go to Court at all.

Default Divorces

A default divorce occurs when one spouse, for whatever reason, entirely ignores the filing of divorce papers. In these situations, it is essential that every effort is made to notify the absentee spouse and serve them properly to protect their constitutional rights. Eventually, the Court may allow notice to be satisfied by publication in local newspapers so the matter can proceed.

Narrow issue divorces

A narrow issue divorce arises when the parties are able to resolve certain issues without the aid of outside counsel, mediation, or litigation — but not others. A common example is when both spouses agree on how their assets should be divided but strongly disagree on child custody.

In situations such as these, a good divorce attorney can help you preserve the issues you've already agreed on, collaborate to find solutions for unresolved issues, and advocate for a fair resolution if the assistance of a Court becomes necessary.

Contested Divorces

Contested divorces arise in situations in which there is a high level of conflict between the parties. Perhaps your spouse is acting irrationally or unfairly. If this is the case, the sooner you secure the help of a strong, experienced divorce attorney, the sooner you can begin bringing order to the process.

Note that in both narrow issue and contested divorces, we look for opportunities to mediate whenever possible. Typically, it is wisest to mediate after full disclosure of relevant documents.

Preparation

When and Where to File

Grounds for Divorce

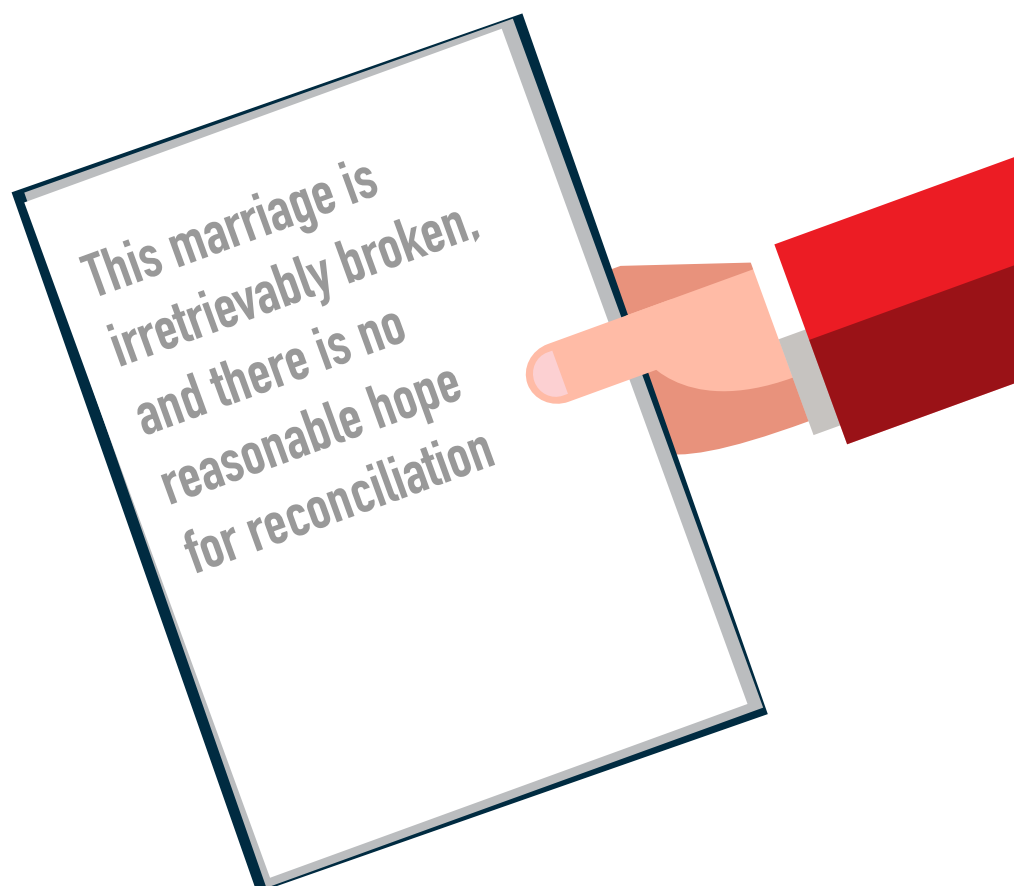
The only legal ground required to obtain a divorce in Arizona is a simple statement from one of the parties that the marriage is irretrievably broken with no hope of reconciliation.

Residency Requirements

The residency requirements for divorce are different than those for legal separation. In order to file for divorce, either you or your spouse must have lived in Arizona for at least 90 days with intent to remain. Filing for legal separation, on the other hand, has no minimum time requirement attached to it.

Where to File

With few exceptions, divorce actions should be filed in the County Court where one of the parties resides.



Preparation

Selecting Your Divorce Attorney

Your attorney for your divorce or any family law matter should be a competent and diligent professional who prepares you for any outcome.

When you hire legal counsel, you're paying for their skill and experience as well as their time. Your attorney should have extensive experience in divorce or family law matters. They should also have a compatible personality to your own and the appropriate personal philosophy to effectively conduct your case. This is as much a matter of art as science.

It is not uncommon for disagreements to arise between a client and their attorney during a case. During these times, it is important to remember that as long as you did your due diligence in selecting the right attorney in the first place, you should feel comfortable placing your trust in them to reach your desired results regardless of the strategy they use to get there.

Don't forget that your attorney is bound by the facts of your particular case and the law which governs it. A good attorney should seek to help you make the best of the situation you find yourself in.

Finally: once you've decided that you need a divorce, the earlier you consult with an attorney, the better prepared you will be for what is to come.



Nuts & Bolts

Filing Your Petition for Divorce

To start an action for divorce, you file a document with the Court called a “petition for divorce.” This sets out the basic facts of your case and tells the Court what you want it to do.

Equally important to informing the Court of your intent to be divorced is informing your spouse that you have begun divorce proceedings against them.

Your documents must be formally delivered to your spouse in one of two ways: either they voluntarily sign an acceptance of service, or they must be served by a process server. This protects their constitutional rights and informs them when and how they must respond to avoid a default judgment against them.

From the date of service of process, 60 days must elapse before a final decree can be entered by the Court. Therefore, an uncontested divorce generally takes about 90 days from start to finish.

There are many complex rules that must be followed for service of process to be considered valid. This is but one of many reasons you should engage competent legal professionals instead of attempting to file your own divorce.



Nuts & Bolts

Preliminary Injunctions & Temporary Orders

Immediately upon filing your petition for divorce, a “Preliminary Injunction” will be issued by the Court. This is an extremely important document.

Preliminary injunctions are intended to protect the status quo. They generally prohibit the parties from disposing of any of their shared property, from harassing each other, and from taking the children out of the state.

Because your hearing date will often be scheduled a few months

A preliminary injunction seeks to maintain the status quo and minimize conflict

in advance, it may be necessary to file for temporary orders along with your petition for divorce to quickly resolve issues which cannot wait until the hearing, such as:

- Temporary restraining orders
- Providing spousal or child support
- Granting one party possession of the house, car, or other property
- Creating a child custody arrangement or visitation plan

Be prepared to disclose all of your relevant financial information when filing for temporary orders.



Nuts & Bolts

Discovery and Disclosure

Discovery

“Discovery” is the term for a collection of tools lawyers use to get the necessary information for the Court to make informed decisions. Discovery must be complied with honestly and timely.

Common discovery methods include interrogatories, requests for production, and depositions. For divorce proceedings, the most important aspects of the discovery process are the mandatory disclosures, found in Rule 49 of the Arizona Rules of Family Law Procedure.

Mandatory Disclosures

In any divorce proceeding, each party must provide initial disclosures to the other—which vary depending on the issues in the case—typically no later than 60 days after you serve your petition for divorce on your spouse. Failure to timely or truthfully disclose carries harsh penalties.

If child custody is at issue in your case, you must disclose the following no later than 60 days after service:

- Any past protective orders;
- Any treatment for mental health disorders, anger management, substance abuse, or domestic violence in the last 5 years; and
- Any criminal history or Department of Child Safety proceeding in the last 10 years.



If child support, spousal maintenance, or attorney's fees are at issue in your case, you must disclose the following (again, no later than 60 days after service) via a document called an "Affidavit of Financial Information":

- Tax returns, W-2, 1099, and K-1 forms for the past 3 calendar years plus current year-to-date information;
- Proof of income from all sources for the current calendar year, which includes pay stubs, salaries, wages, commissions, bonuses, dividends, severance, pensions, interest, trust income, annuities, capital gains, social security and worker's comp benefits, unemployment and disability insurance benefits, recurring gifts, prizes, and spousal maintenance;
- Proof of your payment of child support and spousal maintenance in any other case besides the current proceeding, if applicable;
- Proof of your payment of medical, dental, and vision insurance premiums for any children involved in the divorce;
- Proof of your payment of child care expenses; and
- Proof of your payment of education and special needs expenses.

Finally, **if the division of property is at issue** in your case, you must disclose the following documents no later than 60 days after service:

- All documents relating to the ownership, legal description, purchase price, and encumbrances of any real property you own;
- The last six months of statements from all bank, checking, savings, brokerage, and security account statements and all electronically stored information regarding same;
- The last six months of statements for any retirement and employee benefit accounts (IRAs, 401(k)s, etc.);
- The last six months of statements for any life insurance policies;
- The last five years of business tax returns and any other documents relating to business valuation;
- Documents related to any trust in which you have an interest; and
- A list of all items of personal property (furniture, vehicles, jewelry, etc.) along with their estimated market values and any proof of same.

These mandatory disclosures may seem invasive or unnecessary, but they save time and money for everyone involved. Your attorney will work with you to make this process as easy as possible.

Nuts & Bolts

Mediation and Alternative Dispute Resolution

In general, it's always better to work to resolve contested issues outside of a formal courtroom setting. After both parties have completed their disclosures, you should hire an informed facilitator—such as a judge or an experienced family law attorney—to sit down with you both and try to help you settle any disagreements as smoothly as possible. A successful mediation effectively changes a contested divorce to an uncontested one.

Mediation is much less expensive than the alternative—a series of hearings which are likely to end in a formal trial. And mediation is much more flexible than the often impersonal solutions a trial court could impose upon you.

Courts do not look favorably upon parties who reject the option of mediation without a good reason or who refuse to mediate in good faith. Of course, mediation is not suitable for all couples, especially when one party has physically or emotionally abused the other. Such situations are better left to the Court to resolve.



Nuts & Bolts

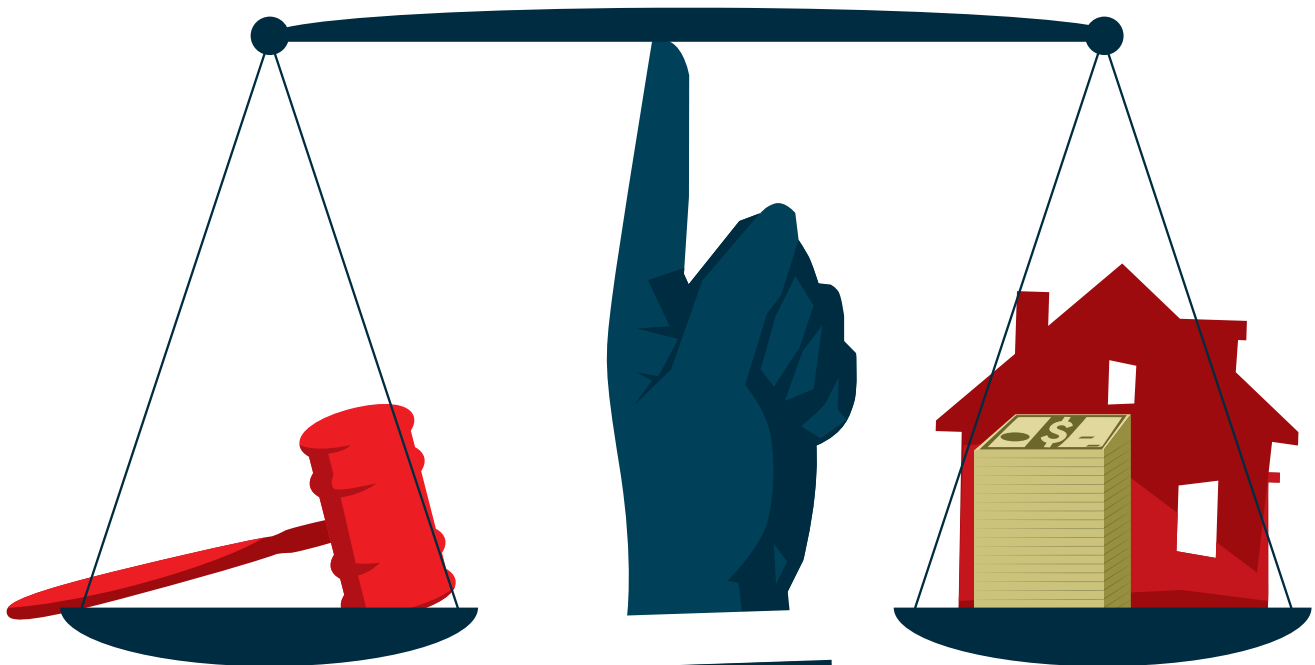
Settlement or Trial?

A successful mediation generally leads to a settlement, in which both parties sign a legal document memorializing their agreements as to child custody, child support, alimony, and division of property.

The vast majority of cases settle. While some issues, such as those involving domestic violence, are generally resolved at trial, most couples find they are able to work out their differences through compromise

and common sense. There are no restrictions on when the parties can settle. Typically, the best thing a lawyer can do for their client is to get the case to a point where the other side realizes settlement is preferable to trial.

A case which does not settle will proceed to trial, where a judge will decide what the terms of the divorce will be based on the facts and the law presented. The trial process is expensive, exhausting, and inefficient and should therefore only be pursued if absolutely necessary. A settlement could end a divorce in just a few months. A trial could drag the process out for years.



Children & Divorce

Parent Education Class

It is the law in Arizona that children whose parents divorce should be able to spend as much time as possible with both of their parents in the ensuing custody arrangement.

Whenever children are involved in a divorce, both parties must attend a parent education class to learn how children and adults react to

separation, divorce, and changes in the family. The course will teach you to use effective co-parenting and communication to make those changes easier for your children.

Your attorney will provide you with a list of class locations, as well as the days and times the classes are offered. The instructor of the course will provide you with proof of attendance, which your attorney will submit to the Clerk of the Court.

Class is
required



Children Issues

Custody Disputes

When the parents cannot agree on custody, the Court must sort through the emotion and identify specific facts to create an arrangement that is in the best interests of the child. Factors the Court may consider include:

- The wishes of the child's parent or parents as to custody;
- The wishes of the child (depending on the child's age and maturity);
- The relationship the child has with his or her parents and siblings;
- How well-adjusted the child is to their home, school and community;

- The mental and physical health of all individuals involved;
- Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent;
- Which of the parents is the child's primary caregiver; and
- Whether the parents have completed the required parent education class.

Note: if one of the parties has been convicted of substance abuse or domestic violence within the last year, a presumption arises that it is not in the child's best interests for the parents to have joint legal decision-making.



Children Issues

Relocation Issues

Questions of relocation are inherently difficult to resolve. Because Arizona generally wants children to spend as much time as possible with both of their divorced parents, a Court will rarely be willing to allow one of the parents to take the children and move across the country after the divorce is finalized.

Relocation cases are complex and fact-specific. A Court will consider many factors in deciding whether to allow the child to move or not,

including the motives behind the proposed move, how far away the child will be from their other parent, the quality of the child's relationship with the parent who will be left behind, and how the child will be able to maintain their relationship with that parent.

In long-distance move cases, a parenting plan should schedule times for telephonic and video calls and travel arrangements, among other considerations.

Incidentally, GillespieShields recently won a watershed victory for relocation rights in Arizona, in

Donald W. v. DCS.



Relocation
with
children
during
and after
divorce is
complex

Financial Issues

Division of Assets

Arizona follows the rule of equitable distribution of marital assets. Equitable distribution doesn't necessarily mean "equal;" it means "fair."

Arizona also classifies assets as either separate property or community property. With few exceptions, all property acquired during the marriage—by either spouse—is presumed to be community property. This includes pensions, bank accounts, stocks, bonds, real and personal

property, and the cash value of life insurance.

Even increases in the value of real property or businesses owned by one of the parties before marriage may be considered community property and therefore subject to equal division.

Finally, if your spouse has engaged in "marital waste," such as excessive gambling or other dysfunctional behavior, you may have a claim for reimbursement of the waste of the community asset, or your spouse may be found fully responsible for the debt from the wasteful conduct.

"Equitable" doesn't always mean "equal"



Financial Issues

Child Support

Questions of child support are entirely separate to questions of child custody.

Arizona Courts calculate child support with a formula set by the Arizona Supreme Court. The resulting number is presumed to be final, with few exceptions. The elements included in this formula are:

- Both parents' respective incomes;
- The medical and dental insurance costs of the child;
- The cost of daycare expenses;
- Any spousal maintenance paid or received by the parents;

- The amount of time the child spends with each parent; and
- Any other children who may be supported by the parents. This does not include step-children.
- Extra educational or extracurricular expenses; and
- Extraordinary child needs.

Child support can become effective the first day of the month after the parties **separate**. Thus, the law provides for a Court to order child support dating back to **before** your divorce is finalized.

By now, the reasoning behind complete disclosure of all financial assets should be clear. In order to ensure that the divorce does not harm the children materially, complete financial transparency by all parties is a necessity.



Financial Issues

Spousal Support

Before awarding spousal support, the Court will consider whether the spouse requesting it:

- Lacks sufficient property to provide for their reasonable needs;
- Is unable to be self-sufficient through employment outside the home, for whatever reason;
- Contributed to the educational opportunities of the other spouse; or
- Is of an age that may preclude the possibility of obtaining self-sufficient employment.

If spousal support is ordered, the Court will determine the exact amount after weighing some factors in addition to those which led to the grant of alimony in the first place. These factors include:

- The standard of living established during the marriage;
- The duration of the marriage;
- The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance;
- Excessive or abnormal expenses, or destruction or concealment of community property; and
- All actual damages and judgments from a criminal conviction of either spouse in which the other spouse or a child was the victim.

Alimony's purpose is to make the divorce as fair as possible



The decision to get divorced is never an easy one, and the actual process can be even more challenging.

The attorneys and paralegals at GillespieShields are ready and able to handle your case in a sensitive and professional manner.

**Call us to schedule an initial consultation at:
602-870-9700.**



Phoenix

7319 N. 16th Street, Phoenix, AZ 85020 P 602.870.9700

Mesa

1630 S. Stapley Drive, Suite 212, Mesa, AZ 85204 P 480.985.4000

GillespieShields.com